The Bar in New Zealand*

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Historical setup

The Law Practitioners Act 123 of 1982 (the Act) regulates the profession in New Zealand. Every person admitted to practice under the Act is admitted as a barrister and solicitor; no person may be admitted *Aas a barrister or solicitor only*. The minimum requirements for admission are an LLB degree and completion of a practical training course prescribed by regulation. A statutory body, the Council for Legal Education (the CLE), has the responsibility to organise practical training, which it does through the Institute of Professional Legal Studies (the IPLS). In order to be able to practise a duly admitted barrister and solicitor has to hold a current practice certificate issued by a district law society, of which there are fourteen. Membership of a district law society is therefore required if you want to practise. Membership of the New Zealand Law Society (the NZLS) is automatic for everyone who holds a current practice certificate. Governance of the NZLS is entirely in the hands of the practising profession. Its council consists of thirty-two practising lawyers, none appointed by the government or any other agency. This enables the NZLS to *promote the interests of the legal profession and the interests of the public in relation to legal matters* without interference from the government.

Every person admitted as a barrister and solicitor has the right of audience before every tribunal in the hierarchy of courts, from the district court to the Privy Council in London. In practice, however, many solicitors prefer not to undertake their own litigation. They pass matters which become litigious on to their litigation partners or brief counsel. Where they brief outside counsel, they call the process "briefing out." The larger firms prefer not to brief out; they would rather keep the fee income within the firm. In order to be able to do that, they have to employ specialist litigators. They also have litigation specialists for different types of disputes, for example, for divorce and family matters, resource management matters, labour matters, commercial and insurance cases and so on. In a big firm the litigation team could be as big as some of the smaller Bars in South Africa. If a firm does not have a specialist litigator available *"in house"* to conduct a particular trial or proceeding, they brief counsel, or, in very rare cases, they brief another firm. Smaller firms simply do not have the need for full-time litigation specialists, nor can they afford to employ the full range of specialist litigation skills their clients may need.

These factors have contributed to the development of a de facto Bar, whose members are known as *barristers sole*. They practise according to the traditional English model we know and have all the powers, privileges, duties and responsibilities that barristers have in England, but they are members of the same district societies as all other practitioners, and of the NZLS. The profession has been fused in New Zealand from the time of arrival of British settlers here. It was only after the Second World War that some lawyers started practising as barristers sole. The independent Bar has never been strong in New Zealand, although it has grown considerably since the early seventies. In a way, the Bar has developed out of a fused profession and as a voluntary association of members who wished to adopt the style of practice of the barrister's profession in England, much like the Bar developed in Natal (now Kwazulu-Natal) in the nineteen-thirties.

Barristers practising in the civil courts are organised in sets of chambers, for the most part, in a setup similar to what we have in South Africa, except that there is no restriction on where they may have their chambers. Criminal barristers tend to practise individually or in small sets of chambers; they do mostly legal aid criminal work. Barristers sole practise as a referral profession; in criminal cases the legal aid clerk nominally fulfils the role of instructing solicitor. Notwithstanding all of this, barristers sole are organised in their own associations, but these enjoy no statutory or official function or recognition.

While all lawyers with practising certificates are bound by the NZLS's Rules of Professional Conduct (the Rules), one of the rules applies specifically to *The Practice of Barristers*. 🕮

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* *This is an extract from Marnewick "Modernisation: changes do not necessarily improve" in 2001 December* Advocate 30. *That article contains more detailed information on the Bar in New Zealand.*

The Bar in Australia

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year the New South Wales government decided to remove itself completely from the process and prohibited any further appointments. In answer to that the New South Wales Bar Association instituted the appointment of senior counsel pursuant to a protocol it devised. Ten years later, and with various systems in place, all appointments (except by the commonwealth government) are now as senior counsel. The appointment system differs from jurisdiction to jurisdiction. In most case the relevant chief justice plays a prominent role. 🕮

Chris Marnewick's paper on "Assessing competency in advocacy skills," delivered at the Barristers' and Advocates' Forum of the IBA in Durban on 24 October 2002, will appear in the next issue of *Advocate*.